

E-filed on: 12/4/12

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

TRACY WATSON, RENEE STALKER, PAM  
STALKER as Guardian *Ad Litem* for O.S.,  
S.W. and R.W., minors,

Plaintiffs,

v.

COUNTY OF SANTA CLARA, *et al.*,

Defendants.

No. C-06-04029 RMW

ORDER ON RENEWED AND  
SUPPLEMENTAL MOTION FOR  
JUDGMENT AND/OR NEW TRIAL

[Docket #538]

Plaintiffs move for a judgment as a matter of law pursuant to Fed.R.Civ.P. 50, and, in the alternative, for a new trial under Fed.R.Civ.P. 59. Plaintiffs assert that they are entitled to punitive damages as a matter of law and seek a new trial on the amount of punitive damages to which they are entitled. The plaintiffs also seek a new trial on both compensatory and punitive damages on the bases that the court: (1) improperly limited the damages to which plaintiffs are entitled; (2) "liberally allowed the introduction of evidence that was prejudicial, lacking relevance (FRE 401) and/or foundation, and whose introduction — even if relevant *arguendo* — violated the balancing requirements of FRE 403, in that the prejudicial nature of the evidence far outweighed its relevance." The court has reviewed the papers filed, the record of the proceedings and heard the arguments of counsel. The court hereby denies the motion in its entirety.

Order on Renewed and Supplemental Motion for Judgment and/or New Trial  
No. C-06-04029 RMW

## I. ANALYSIS

**A. Plaintiffs' Claim that They Were Entitled to Punitive Damages as a Matter of Law and a New Trial on the Amount of Punitive Damages****1. Plaintiffs' Motion for a Judgment as a Matter of Law**

The court vacated the award of punitive damages against Sergeant Blank and Officer Hoyt made by the jury in the original trial of this case. The issue of damages was re-tried and jury did not award punitive damages. Plaintiffs assert that "the quantum and nature of evidence with regard to conduct of the defendants constituting a basis for punitive damages were so substantial that no reasonable jury could have concluded that punitive damages should not be awarded. Pltfs.' Mot. at 5:24-6:1.

Plaintiffs' argument is unique and without factual merit. Even if a jury finds that a party's conduct meets the threshold for punitive damages they are never awarded as of right, no matter how egregious the defendant's conduct. *See Smith v. Wade*, 461 U.S. 30, 52 (1983), *Harris v. L & L Wings, Inc.*, 132 F.3d 978, 983 (4th Cir. 1997); *U.S. v. Balistreri*, 981 F.2d 916, 936 (7th Cir. 1992). In discussing entitlement to punitive damages the Court in *Smith* stated:

The argument overlooks a key feature of punitive damages—that they are never awarded as of right, no matter how egregious the defendant's conduct. "If the plaintiff proves sufficiently serious misconduct on the defendant's part, the question whether to award punitive damages is left to the jury, which may or may not make such an award." D. Dobbs, *Handbook on the Law of Remedies* 204 (1973) (footnote omitted).

461 U.S. at 52.

In any event, in the instant case, regardless of the fact that the jury had total discretion to award or not award punitive damages if the threshold had been met, substantial evidence supported the denial of an award of punitive damages. In ruling on a motion for judgment as a matter of law, the test is whether the evidence permits only one reasonable conclusion and that conclusion is contrary to the jury's verdict. *E.E.O.C. v. Go Daddy Software, Inc.*, 357 F.3d 951, 961 (9th Cir. 2009). In the instant case, there was substantial evidence that supported the jury's decision denying an award of punitive damages. Based on the evidence, the jury could have found that the officers' seizure of the children was based upon a good faith but mistaken belief as to the legal standard for removing the children without a warrant. The jury could also have concluded that the officers were

1 acting in what they perceived to be the best interests of the children and in accordance with what  
2 they erroneously believed was proper procedure. In either scenario, punitive damages would not be  
3 appropriate.

4 The motion for judgment as a matter of law that plaintiffs are entitled to punitive damages is  
5 denied.

## 6 **2. Alternative Motion for New Trial**

7 In their alternative motion for a new trial plaintiffs assert that defendants' counsel improperly  
8 argued that the state juvenile court's ruling on July 5, 2005 "was some sort of after-the-fact court  
9 sanctioned validation of correctness or appropriateness of the officer's actions in removing the  
10 children." Pltfs' Mot. at 6:17-7:1. However, the court instructed the jury at the time defense  
11 counsel made the comment to which plaintiffs object that the juvenile court made no finding about  
12 whether there was an emergency circumstance when the officers took the children into protective  
13 custody. The court also instructed the jury in its final instructions that "the Juvenile Court order  
14 does not validate or retrospectively approve the constitutional violation including the manner in  
15 which the children were taken into protective custody." Jury Inst. No. 4. The court cured any  
16 potential prejudice resulting from defense counsel's argument. The alternative motion for a new trial  
17 on damages is denied.

## 18 **B. Alleged Evidentiary Errors**

### 19 **1. Consideration of Alternatives**

20 Plaintiffs also complain about several evidentiary rulings made by the court. Plaintiff claim  
21 that the court erred by allowing defense counsel "to ask, over repeated objections, questions about  
22 whether Tracy Watson or Olivia Stalker 'considered' *other responses* to various events or  
23 circumstances." Pltfs' Mot. at 9:23-10:1. For instance, plaintiffs allege that it was not permissible  
24 for defense counsel to question Mr. Watson about how long it would have taken him to bring OS  
25 home from Kaiser Santa Clara when Sgt. Blank ordered Mr. Watson to respond by 4:00 p.m.

26 The court does not find that defense counsel's questions were improper. Mr. Watson  
27 emphatically testified that his actions and responses to the social workers and the police were  
28 justified and reasonable. The entire conversation between Mr. Watson and Sgt. Blank was relevant

1 for the jury to consider in evaluating the reasonableness of both parties and in explaining the actions  
2 that followed. Plaintiffs sought both compensatory and punitive damages for the stress they suffered  
3 from the officers' seizure of the children without a warrant. The circumstances that caused plaintiffs'  
4 distress could not be evaluated without testimony from the plaintiffs about how and why they  
5 responded the way they did to the requests and demands of the police and social workers. The  
6 defense was entitled to have the jury consider the plaintiffs' reasonableness, or lack thereof, in its  
7 determination of what caused the distress the plaintiffs suffered and whether plaintiffs' own conduct  
8 caused or contributed to the stress they suffered.

9 Defendants were also entitled to cross-examine the credibility of the plaintiffs' testimony.  
10 For example, defendants were entitled to cross-examine Mr. Watson on whether he could have  
11 returned to the family home in time to satisfy Sgt. Blank's demand. A jury could reasonably have  
12 considered Mr. Watson's actions and motives in contending that he could not have gotten home by  
13 4:00 p.m. as insisted by Sgt. Blank or why he elected to stay in a motel rather than the family home  
14 following the seizure of the boys. Cross-examination about what happened and what the parties said  
15 and believed allowed the jury to understand what happened and why and allowed it to evaluate the  
16 cause of and responsibility for the emotional distress allegedly suffered by plaintiffs. The testimony  
17 was not only relevant to a determination of compensatory damages for emotional distress but also to  
18 an understanding of the motive and intent of the officers and whether they acted with malice and  
19 oppression and should be punished by an award of punitive damages.

## 20 **2. Testimony Regarding Reasons for Becoming a Police Officer**

21 Plaintiffs claim that the court erred by allowing the officers to each answer a question about  
22 why he became police officer. The testimony was very brief. Nevertheless, plaintiffs assert it was  
23 prejudicial. The court believes the testimony was relevant and clearly the type of evidence that the  
24 court has discretion to admit. Plaintiffs claimed that the officers acted with malice and oppression  
25 and sought punitive damages against each of them. In essence, plaintiffs were asserting that the  
26 officers simply did not care about the rights of the plaintiff family, and were willing, for no good  
27 reason, to tear a family apart. Since defendants' motivations and characters were being directly  
28 challenged, it was certainly within the discretion of the court to allow brief testimony to explain that

1 the defendants were motivated by good intentions and that they did not become officers with the  
2 intent or goal of recklessly disregarding the rights of citizens.

### 3 **3. Policy Clarification**

4 Plaintiffs further complain that the court erred in allowing into evidence a new, clarified  
5 policy adopted by the police department which was consistent with training the officers received  
6 after the events in this case on the requirement for exigent circumstances to remove children absent  
7 a warrant. The evidence was introduced to suggest that the officers' actions were motivated by a  
8 lack of understanding and not out of malice. Further, the evidence tended to suggest that the officers  
9 would not make similar mistakes in the future. A district court may, in its discretion, allow a  
10 defendant to introduce evidence of remedial conduct undertaken in response to his wrongful act as a  
11 factor mitigating punitive damages. *See Swinton v. Potomac Corp.*, 270 F.3d 794, 814 ((th Cir.  
12 2001).

### 13 **4. State of Mind Evidence**

14 Finally, the plaintiffs complain that the court allowed "defendants to extol their own personal  
15 'state of mind,' including what they 'felt' about information and circumstances confronting them  
16 during the two investigations and removals." Pltfs' Mot. at 13:2-4. The court is unclear as to what  
17 specifically the plaintiffs claim the court erroneously allowed. What the officers believed or  
18 understood was clearly relevant to explain the actions they took and their motivations.

### 19 **C. Instruction on Recoverable Damages**

20 Plaintiffs assert that the court's instruction on recoverable damages was erroneous and,  
21 because of this error, they are entitled to a new trial on damages. Plaintiffs focus on two objections:  
22 (1) that the instruction failed to allow recovery for damages resulting from the separation of the  
23 parents from their children and should not have been limited to the unconstitutional manner in which  
24 the removal was accomplished; and (2) the court did not explain to the jury that the juvenile court's  
25 order of July 5, 2005 was based upon a *prima facie* standard and did not allow plaintiffs to challenge  
26 the findings of the juvenile court in the instant action.

### 27 **1. Recoverable Damages Limited to Constitutional Violation**

Plaintiffs contend that the court improperly limited the damages recoverable in this case. The children were removed on June 29 and June 30, 2005 without a warrant or exigent circumstances and a detention hearing was held on July 5, 2005. The juvenile court made a determination that the children should remain detained for their welfare.<sup>1</sup> The parties have not cited, nor has the court found, a case that presents the exact issue involved here: what damages are recoverable for the removal of a child from his or her parents without a required warrant or exigent circumstances where the juvenile court makes an order at the initial detention hearing that the child should remain detained for his or her welfare.

The court instructed the jury that:

You may award as compensatory damages the amount of money that you determine will reasonably and fairly compensate plaintiffs for any emotional distress or injury that you find was caused by the violation of plaintiffs' Constitutional rights by Sgt. Blank and Officer Hoyt, specifically taking of the plaintiff children into custody without either a warrant authorizing them to do so or the existence of "exigent" (emergency) circumstances. You should consider the mental and emotional pain and suffering experienced by each of these plaintiffs as a result of the Constitutional violation. However, your damages award should not include any damages for emotional distress resulting from the separation of the children from their parents and the children's detention in protective custody. The Santa Clara County Department of Family and Child Services filed a petition with the Juvenile Court, and the Juvenile Court ordered that the children were to remain in protective custody pending further order of the Juvenile Court. In light of the Juvenile Court order, the Officers cannot be held responsible for any emotional distress caused by the separation of the children from their parents and the children's detention in protective custody. However, the Juvenile Court order does not validate or retrospectively approve the constitutional violation including the manner in which the children were taken into protective custody.

Jury Inst. No. 4.

The court believes it correctly instructed the jury based on the reasoning of the Supreme Court in *Carey v. Piphus*, 435 U.S. 247 (1948), which involved a reasonably analogous situation. In *Carey* students claimed that they had been suspended from school without procedural due process

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<sup>1</sup> Cal. Welf. & Inst. Code § 313 requires that an initial detention hearing be held within 48 hours after a child has been taken into custody, excluding nonjudicial days, unless within that period of time a petition to declare the child a dependent child has been filed. If a petition has been timely filed, Cal. Welf. & Inst. Code § 315 directs that a detention hearing be held before the expiration of the next judicial day after a petition to declare the minor a dependent child has been filed. The detention hearing in the instant case took place hearing on July 5, 2005 given that the three prior days were weekend days and the 4th of July holiday.

1 and so brought action against the school board. The district court found that the students' rights had  
 2 been violated but failed to award damages, and plaintiffs appealed. The court of appeals held that  
 3 the students were entitled to recover substantial damages for the suspensions even if they were  
 4 justified and even if the students did not prove that any other actual injury was caused by denial of  
 5 procedural due process. The Supreme Court reversed and held that where a deprivation is justified  
 6 (the suspensions in *Carey*; the removal here) but procedures are deficient (suspensions without a  
 7 pre-suspension hearing in *Carey*; here the removal without a warrant), whatever distress a person  
 8 (the students in *Carey*; the plaintiffs here) suffers that is attributable to the justified deprivation (the  
 9 suspensions in *Carey*; the removal here) is not properly compensable under 28 U.S.C. § 1983.  
 10 *Carey*, 435 U.S. at 263-264. However, mental and emotional distress caused by denial of procedural  
 11 due process itself (suspensions without a pre-suspension hearing in *Carey*; here the removal without  
 12 a warrant) is compensable although difficult to prove. *Id.*

13 The 10th Circuit applied *Carey* in *Gomes v. Wood*, 451 F.3d 1122 (10th Cir. 2006), a case  
 14 involving the application of *Carey* in a child removal case. The court held that the district court  
 15 improperly granted summary judgment in favor of defendants based upon *Carey* because plaintiffs'  
 16 alleged damages resulted from the emotional distress caused by the denial of procedural due process  
 17 itself and thus were recoverable under *Carey*. The significance of *Gomes* to the case at issue is that  
 18 it recognized the difference in a child removal case between damages arising from the deprivation of  
 19 liberty or property (separation of the family) and damages arising from the denial of procedural due  
 20 process itself. The *Gomes* court observed that plaintiffs could not recover damages for the  
 21 separation of the parents from the child because the removal was justified. However, the district  
 22 court mistakenly construed the damages sought by plaintiffs as separation damages rather than  
 23 damages for the denial of procedural due process itself. "Here, the Gomeses have not contested the  
 24 state judge's finding that the removal of Rebekah was justified. Moreover, they have not sought  
 25 nominal damages. Accordingly, they may only recover damages arising from the denial of due  
 26 process itself." *Id.* at 1132.

27 We acknowledge that the line drawn by the Supreme Court in *Carey*—between (a)  
 28 damages arising from the deprivation of liberty or property and (b) damages arising  
 from the denial of procedural due process itself—may be a fine one. Moreover, in



many instances, plaintiffs may offer the same evidence to support both classes of damages claims.

Nevertheless, the Gomeses have alleged that they have suffered damages from the denial of procedural due process itself (and thus recoverable under *Carey*).

*Id.*

Defendants argue that *Mabe v. San Bernardino County*, 237 F.3d 1101 (9th Cir. 2001), supports their position that plaintiff can only seek damages for the failure to obtain a warrant and supports the application of *Carey* to the instant case. In *Mabe*, the court held that although summary judgment was precluded on plaintiff's claim that her daughter was improperly removed without a warrant, summary judgment was proper in favor of defendants on plaintiff's claim that defendants were liable for placement of the daughter in foster care. The court reasoned that because the juvenile court found two days after the removal that a *prima facie* showing had been made that the lack of pre-placement preventive efforts was reasonable and that continuation in the parental home would be contrary to the welfare of the minor, there was no basis for liability for the four-year placement in foster care. The *Mabe* court clearly held that the juvenile court's finding cut off any liability for damages or suffering incurred as a result of the foster care placement. *Id.* at 1110. It is not clear, however, that *Mabe* raised the specific claim that she was entitled to damages for the separation from her daughter for the two day period prior to the detention hearing as opposed to a claim that the placement should never have been made. Therefore, *Mabe* offers no insight on the issue here. However, nothing in *Mabe* suggests that the rules from *Carey* and *Gomes* should not be applied to the instant case.

## **2. Lack of Relevance that Juvenile Court's July 5, 2005 Detention Order Was Based Upon a *Prima Facie* Standard**

The plaintiffs apparently contend that they should have been able to attack in the instant case the correctness of state juvenile court's detention order since it was based upon a *prima facie* standard. However, the only purpose of the reference to the detention order was to explain that the officers were not responsible for the detention of the children after July 5, 2005. That continued detention was based upon the petition filed by the County and the juvenile court's detention order. The officer defendants were not responsible for the detention order and the jury needed to be so advised. The correctness of the detention order was not relevant—the relevance was only that it was



1 made. The court did not err by admitting the fact of the detention order because it was made using a  
2 *prima facie* standard.

3 **II. ORDER**

4 Plaintiffs' renewed and supplemental motion for judgment as a matter of law and for a new  
5 trial on damages is denied in its entirety.

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7 DATED: December 4, 2012

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9 RONALD M. WHYTE  
10 United States District Judge

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United States District Court  
For the Northern District of California